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## Input regarding Changes to 25 CFR Part 3 -- Andrew Lara

MESSAGE

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**andrew lara** <andrewcorban@yahoo.com>

Sat, Aug 17, 2013 at 12:14 AM

Reply-To: andrew lara &lt;andrewcorban@yahoo.com&gt;

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Please accept my written input in regards to the changes to 25 CFR Part 3.

Thank you,  
Andrew C. Lara



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**Remarks in Regards to the Proposed Changes to the Federal Acknowledgment Criteria.docx**

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## Remarks in Regards to the Proposed Changes to the Federal

### Acknowledgment Criteria

By Andrew C. Lara

As a student of Native American studies I would like to take the time to give my opinion in regards to the proposed changes to the Federal Acknowledgement criteria. I agree with the proposed changes, since changing the date from 1900 to 1933 for criteria (a) and (c) is in accordance with the Indian Reorganization Act and the Federal Governments attempt to re-establish tribal self-government. In other words, it's difficult to ask tribes to establish their self-governance when the Federal Government was actively attempting to break up tribes by way of the Indian Allotment Act. However, I do not think the proposed changes go far enough, especially in relation to those tribes from California who are seeking federal recognition. In particular, criteria (e) needs to be re-examined in light of the 1933 California Indian census rolls. Affirming this observation, the UCLA American Indian Studies Center issued a report entitled *A Second Century of Dishonor: Federal Inequities and California Tribes* wherein they note;

Five sets of events in the history of California Indians created distinct conditions relevant to the question of recognition: (1) the federal government's negotiation of eighteen treaties with California tribes during the 1850's and Congress's refusal to ratify those treaties; (2) creation of lists or "rolls" of California Indians for purposes of distributing land claims judgments during the 1940s and 1960s; (3) creation of public domain

allotments for many California Indians who were not settled on rancherias or reservations; (4) provision of services to California Indians; and (5) the termination of 44 California tribes during the 1950s and 1960s. This distinctive history suggests that California tribes should not be subjected to the standard federal process for achieving tribal recognition. Rather, a process should be established that takes the unique needs and special circumstances of California Indian groups into account.

This arc of inequity continues to California tribes seeking recognition through the Federal Acknowledgement process. Specifically, the creation of the 1933 Judgment Roll that served as a means of distributing land claims judgments. The 1933 Judgment Roll was based upon the 1928 California Indian Act applications completed by California residents who claimed Indian ancestry. The California Indian Act required participants to state their descent from a California Indian ancestor living during 1852. No further evidence was required in the form of genealogical documentation corroborating the assertions to California Indian ancestry. Aside from asking for names of ancestors living in 1852 the applications required a stated blood quantum for each claimed ancestor. Later, these 1928 California Indian Act applications would serve as the source documents for Statement/Certificate Degree of Indian Blood (commonly referred to as CDIB) issued by the Bureau of Indian Affairs. CDIB's are well known accepted documents throughout Indian Country whereby the tribal affiliation(s) and Indian blood quantum/fraction is calculated. CDIB's are used by tribal members to access Indian Health Services, educational grants/scholarships, and more importantly CDIB's are typically required for tribal membership.

Using a layperson analogy, consider some of the requirements of a winning college football team. First, all players must meet the minimum grade point average

in order to be eligible for the team (consider criterion (e), “membership”). Secondly, all eligible players need to play as a unit and demonstrate their abilities as a team (consider criteria (b), “community” and criteria (c) “political influence”) in order to produce victories. Having star players who are ineligible to play on the team produces no victories. On the other hand, having a team full of eligible players who cannot play as a unit also produces no victories. Therefore, the best scenario is to have as many players as possible to be eligible for the team, while being able to demonstrate that they can play as a unit. Using this example in relation to the OFA criteria, possessing a tribe of “eligible” members who cannot demonstrate “community” and “political influence” will not fulfill the threshold for federal acknowledgement. Likewise, having a tribe of “ineligible” members who can demonstrate “community” and “political influence” will also not be able to meet the threshold. Therefore, identifying and documenting tribal members who are considered “eligible” provides the tribe/anthropologist a foundation to make the case for “community” and “political influence”.

In their proposed finding and technical assistance meetings with the Juaneno Band of Mission Indians, the OFA readily dismissed the importance of the California 1933 Judgment Rolls. The following transcribed conversation took place in Washington D.C. at the Office of the Interior on April 18, 2008. Ms. Mall is representing JBMI (Petitioner B) whereas; Moderator Roth, Dr. Earl, and Mr. Fleming (Director, OFA) represent the OFA. The following exchange highlights this dismissal;

MS MALL: I actually had a more general question about the rolls.

MODERATOR ROTH: A little louder.

MS MALL: The rolls are actually used not just by non-federally recognized tribes but also recognized tribes to determine their membership. It seems to me that the way that you guys have examined the rolls has far reaching implications.

I was wondering if – it seems to me like it is a policy decision, and if you guys have discussed that with Assistant Secretary Artman.

DR EARLE: What decision is that?

MODERATOR ROTH: Is that the question: Have we discussed this with the Assistant Secretary?

MS MALL: Right, that the 1933 rolls, because they are used by recognized tribes to determine their membership, by Federally recognized tribes, that the implication that perhaps they are not credible has far reaching policy implications, and have you discussed that?

DR EARLE: Well, I don't think it is so much that as that it doesn't identify the historical tribe. It just identifies – I discussed earlier, some of the

Federal Indian census's rolls are actually of a cohesive group, all of whom are in the same community and descend from the same ancestors; whereas, this census was just that, a census of a wide variety of people.

So it doesn't identify any specific group that is an entity on it. It's just – it is really not – other than the fact that it asks for ancestry, what your ancestry was, it is not a lot different from a regular census except for the fact that it wasn't taken in place. It was taken in a central location.

MR FLEMING; You might want to prepare for your comments. Specifically identify those Federally recognized tribes that do use the 1933 Judgement roll, fund roll, as a basis of their enrollment or other parts of their process.

I am not aware of any, but you might want to provide that in your comments.

I am of the opinion that Dr. Earle did not fully understand the question asked by Ms. Mall, in regards to the 1933 Roll. Dr. Earle answered her question in the context of noting that the 1933 Roll did not identify a "historic tribe" which is correct. However, Dr. Earle fails to realize that JBMI and others do not look to the 1933 Roll to define a "historic tribe", but rather the 1933 Roll defines "historic California Indians" (!) living during 1852 and descendants thereof. Furthermore, Ms. Mall pressed the point that federally recognized tribes use the 1933 Roll as a source document for tribal membership. The fact that some tribes use the 1933 Roll for membership purposes gives credence to the notion that this roll captured historic

California Indians. In response, Mr. Fleming and the rest of the staff from the OFA were unaware of any federally recognized tribe that used the 1933 Rolls for membership purposes. Whereas, the Pitt River tribe from Northern California is one such tribe that relies on the 1933 Roll for "base membership". Section 2 part C of the Pitt River constitution reads;

c. He/She is listed as a Pit River Indian on the 1928 Census roll and is at least 1/4 Indian blood or descendant thereof.

Note that the Pitt River constitution reads "1928 Census" in reference to the 1928 California Indian Act applications, which served as the source for the 1933 Rolls. I have confirmed this point with members of the Pitt River tribe.

Therefore, if the 1933 California Indian Census rolls are acceptable forms of identification for federally recognized tribes, then why is not acceptable for tribes seeking federal recognition? The BIA has yet to fully answer this question in a meaningful way. Sure, the OFA rejects the 1933 California Rolls and the subsequent CBIDs as valid forms for tribal identification for the federal recognition process (see JBMI final determination), yet the BIA has failed to address why the very rolls and CBIDs they reject are valid forms of identification for federally recognized tribes. This double standard needs to be addressed. The 1933 California Indian rolls and criteria (e) are in direct odds with one another. One could make the argument that the OFA is in "the business of identifying real Indians", then what was the Federal

Governemnt doing in 1933 by way of the California Indian rolls? The BIA fails to consider the ramifications associated with rejecting members who solely have CBIDs as a means of identifying their connection to an Indian tribe. For example, if family X is removed because they cannot provide the sufficient documentation to demonstrate their tie to a historic Indian, then that family member and their association with the tribe by way of participation, leadership positions, and social-communal ties are erased from record. Removing family X prevents a tribe from establishing criteria (a) and (c) if that family played a role in the tribal affairs. Once again, this was not on account on something Family X did, but it was the misguidance of the Federal Government that created and perpetuated this problem.

I would like to see the BIA/OFA address these problems. I propose the following; the BIA needs to accept the mistake of the Federal Government and the chaos created by the 1933 California Indian rolls by accepting those members who can trace themselves to the 1933 California Indian rolls as authentic, or at least able to participate as members of a tribe seeking federal recognition without having an effect on criteria (e.). There is more that can be expressed, but I would like to thank the BIA/OFA for the ability to write my concerns.